

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

United States of America for
the use of Ferguson
Enterprises, Inc.

Plaintiff,

vs.

Civil Action 2:12-cv-460
Judge Graham
Magistrate Judge King

West Bend Mutual Insurance Company

Defendant.

ORDER

This case was dismissed, without prejudice, after plaintiff failed to show cause why the record did not demonstrate timely service of process. *Order*, Doc. No. 4; *Clerk's Judgment*, Doc. No. 5. This matter is now before the Court on plaintiff's motion for relief from that judgment. *Motion to Set Aside Judgment*, Doc. No. 6.

Plaintiff has demonstrated that its failure to respond to the order to show cause was initially attributable to a docketing error on the part of the Clerk of this Court. Its counsel's failure to respond after that docketing error was corrected was a consequence of inadvertence and excusable neglect. See Fed. R. Civ. P. 60(b). Plaintiff has also demonstrated defendant's waiver of service of process and plaintiff's commitment to the prosecution of the litigation. Under these circumstances, the Court concludes that plaintiff's motion for relief from judgment, Doc. No. 6, is

meritorious.

Plaintiff's motion for relief from judgment, Doc. No. 6, is **GRANTED**. The *Order* and *Clerk's Judgment*, Doc. Nos. 4, 5, are **VACATED**. This case is **RESTORED** to the active docket of this Court.

Plaintiff is **ORDERED** to file the waiver of service of process within seven (7) days of the date of this *Order*.

Date: October 25, 2012

s/James L. Graham
James L. Graham
United States District Judge